



May 21, 2010

Secretary of Federal Communications Commission  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

Re: CG Docket No. 02-278 and FCC 10-18

Dear Commission's Secretary:

Citigroup Inc. ("Citigroup"), one of the largest U.S. financial services holding companies, respectfully submits these comments in response to the proposal of the Federal Communications Commission (the "FCC") published in the Federal Register on March 22, 2010, 75 *Fed. Reg.* 13417 (the "Proposal"). We appreciate this opportunity to make comments on the Proposal, especially in light of the serious ramifications the Proposal could have on our company, other financial institutions, and other companies who endeavor to make the best use of modern calling technology to render their consumer communications less expensive, more timely and more efficient.

The FCC proposes to modify its rules under the Telephone Consumer Protection Act (the "TCPA") to harmonize them with the Federal Trade Commission's (the "FTC's") recently modified Telemarketing Sales Rule (the "TSR"). The FCC seeks comment on whether its changes would benefit consumers and industry by creating greater symmetry between the two regulations.

1. ***The TSR applies only to telemarketing calls, whereas the TCPA extends far beyond telemarketing to a wide range of commercial calls, including customer service and collections calls. The goal of symmetry does not require the FCC to extend the newly modified TSR to the broad categories of non-telemarketing communications that are not covered by the TSR.***

Both the TSR and the TCPA require a consumer's "prior express consent" to receive certain types of phone calls – prerecorded or autodialed calls, for example. The FTC recently adopted a stringent interpretation of the "prior express consent" requirement that relates to calls covered by the TSR –that is, to prerecorded *telemarketing calls* to a consumer's residential land line. The amended TSR prohibits prerecorded messages unless the consumer has given unambiguous prior express written consent to receive prerecorded calls. For the consent to be effective, the caller must show that the consumer received "clear and conspicuous" disclosure of the consequences of providing consent.

Unlike the TSR, however, the TCPA covers *virtually any* commercial call made by a company to consumers, including telemarketing *but also including customer servicing and collections calls*, if they are made by an autodialer or use a prerecorded or artificial messaging device. We do not believe that the FCC should be compelled, on the basis of symmetry, to adopt the FTC's standards under the TSR, since the TCPA's reach is so much broader than the reach of the TSR. If the FCC decides to adopt the FTC's standard for *telemarketing calls* for the sake of achieving symmetry, it certainly need not go any further.

**2. *Public policy does not compel the FCC to adopt a rule that would limit automated service and collections calls covered by the TCPA.***

The TCPA does not require a consumer's consent to receive prerecorded or artificial messaging on a land line if the message does not contain marketing content. Therefore, the FCC's adoption of the TSR consent requirement would not affect service or collections calls made to land lines that do not include marketing messages. It would, however, have a significantly negative impact on a company's ability to make autodialed or prerecorded service and collections messages to cellphones. Adoption of this more stringent rule would have a tremendous affect on our ability to reach these cellphone customers with critical, time-sensitive calls, such as those relating to fraud, identity theft, and missed payments. We do not believe there is any public policy benefit in making it more difficult for companies to make automated customer service and collections calls to cellphones, or for consumers to receive these calls.

Rather, we believe that it is in the consumer's interest to receive service and collections calls in a timely manner, and in many instances we are required by law or contract to make these calls. We believe that financial institutions should be permitted to make these calls using the same reasonable methods in use today which have been endorsed by the FCC.

**3. *The FCC's existing rules work well for financial institutions and their customers, and there is no reason to change existing processes. This is especially true absent a showing of widespread consumer dissatisfaction or abuse.***

Since the TCPA was enacted in 1991, the financial industry has adopted standards to effectuate the "prior express consent" requirement in accordance with flexible guidance provided by the FCC. Specifically, the FCC has found that prior express consent to receive an autodialed or prerecorded voice call to a cellphone may be given orally or in writing. They have also found that a business may contact a consumer at a mobile number provided by that consumer to the business, without the additional consent language the FTC finds necessary for telemarketing calls.<sup>1</sup>

Notwithstanding the fact that these standards have been working in the marketplace, the FCC would adopt the FTC's rule that would no longer allow financial institutions to obtain oral consents to contact consumers by cellphone. Nor would the FCC continue to allow a business who receives wireless numbers from consumers be allowed to call those consumers using those numbers they supplied if the business

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<sup>1</sup> See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 F.C.C. Rcd 8752 (1992) and 23 F.C.C. Rcd 559 (2008).

uses an autodialer. Instead, under the Proposal the business must require a consumer who would like to be called on a cellphone to execute an overly formalistic written consent in which the consumer specifically indicates a willingness to receive calls “using an automatic telephone dialing system or an artificial or prerecorded voice”. This written consent form would be required even though the consumer could at any time and by any means revoke his or her consent to be contacted by cellphone, and where it is the consumer who contacts the financial institution with the request to call his or her wireless number.

We believe that the existing rules are reasonable and work well for the industry and consumers. We believe that obtaining a number at the consumer’s discretion should be sufficient to enable a company to contact that consumer on a manual or automated basis, per the FCC guidance discussed above. If a consumer no longer wishes to receive calls at that number, he or she can simply so inform the company.

***4. Adoption of the FTC standard for non-telemarketing calls would undermine banks’ abilities to use efficient calling methods to reach consumers with cellphones. By doing so, they would harm, rather than benefit, those consumers.***

As we have stated, we do not believe that any goals of symmetry would be served by the FCC adopting the FTC’s more restrictive standard of “prior express consent” for non-telemarketing calls. To the contrary, we believe that the FCC would be *harming* consumers if it chose to do so.

There are many methods of communication that are available to consumers today – not simply telephones that are connected to residential land lines. Consumers have embraced new technology, such as smartphones and cellphones, presumably because of their ease of use, portability and ability to generate and receive instant messaging.

Cellphones, in fact, are beginning to *replace* traditional means of communication, especially for younger Americans. For example, according to the U.S. Department of Health and Human Services, the percentage of households that are wireless-only increased by approximately five percent in just 12 months, from 17.5% between January and August of 2008, to 22.7% of households between January and June of 2009.<sup>2</sup> The trend is even more pronounced in younger generations.<sup>3</sup> Therefore, our inability to call these consumers on their cellphones means that we will not be able to communicate with them by phone at all, unless to manually call them, which is most often an unworkable solution.

Modern technology such as autodialers and prerecorded messaging devices that are targeted by the TCPA are essential tools that allow companies in time-critical situations to contact multiple consumers efficiently and at reasonable cost. These devices provide functionality that simply *cannot* be accomplished manually. But, perhaps more importantly, the benefits of this technology do not inure only to financial institutions. They also provide substantial benefits to consumers, by allowing them to receive critical alerts from their financial institutions relating to time-sensitive matters such as fraud alerts and missed payments, and messages relating to opportunities such as credit modification programs.

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<sup>2</sup> See National Health Information Survey (December 2009).

<sup>3</sup> According to the above survey, nearly one-half of adults aged 25-29, and nearly one-third of adults aged 30-34, lived in households with only wireless telephones.

Financial institutions frequently rely on these automated calling devices to comply with legal and regulatory obligations. For example, autodialers and prerecorded messaging are used to provide security breach notifications pursuant to state laws and the Gramm-Leach-Bliley Act,<sup>4</sup> or notices of address discrepancies pursuant to the Fair Credit Reporting Act (the “FCRA”).<sup>5</sup>

Financial institutions also need these devices to allow them to fulfill their obligations under Section 605A of the FCRA<sup>6</sup> when a consumer has been the victim of identity theft. When an identity theft occurs, the consumer has the right to place a fraud alert in his or her credit reporting agency file, to alert prospective users of the consumer report to verify the consumer’s identity before they grant additional credit in the name of that consumer. Because the FCRA expressly requires a creditor to call the consumer to conduct this verification, creditors rely on the efficiency of autodialers to fulfill their obligations.

The Proposal would not allow financial institutions to use autodialers to call consumer’s cellphones with these messages unless overly stringent consent requirements are met. This lag could result in significant harm to consumers, by delaying a response to consumers who in fact have requested credit, or by delaying notice to consumers that someone else is trying to obtain specific credit in their name.

Financial institutions also use autodialers and/or prerecorded messages to remind consumers when corrective action is necessary, to help them to avoid fees and/or incremental interest, and to prevent negative credit reporting. For example, we use these devices to contact consumers by cellphone about low account balances, overdrafts or past due accounts. In addition, an autodialed or prerecorded call is often made as a follow-up to a consumer interaction. For example, we may place an autodialed call to consumers to make them aware that we have mailed their credit cards to them which need to be activated, or to remind them that they need to complete additional documents as part of the account-opening process.

Consumers reap significant benefits when their financial institutions are able to reach them quickly and efficiently. Using autodialers or prerecorded messaging, financial institutions are able to reach out to consumers experiencing financial hardship in a quicker and more cost-effective way than would be possible otherwise, to initiate early conversations with consumers who may qualify for special repayment or other modification programs. Using advanced calling technology in these cases frees up loss mitigation specialists and other financial institution representatives to spend their time working with individual borrowers, rather than making repetitive manual phone calls. Avoiding foreclosure in today’s depressed marketplace is one of our top priorities, and anything that would make it more difficult to communicate with borrowers regarding ongoing outreach efforts will ultimately inure to overall detriment of financial institutions and the general public. It would unfairly prejudice consumers who use cellphones if we are able to make these expeditious calls to consumers with land lines but not to cellphones.

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<sup>4</sup> Gramm-Leach-Bliley Financial Services Modernization Act of 1999, Pub. L. 106-102, 113 Stat. 1338, §501(b).

<sup>5</sup> 15 U.S.C. §1681c-1.

<sup>6</sup> 15 U.S.C. §1681c(h).

5. *Existing portfolios.*

As discussed above, the FCC has found that a consumer may provide consent to receive autodialed calls to a cellphone either orally or in writing. The FCC has also found that it is reasonable for a business to believe that it has permission to contact a consumer at a number the consumer has provided to that business as a contact number. Financial institutions have built their operations on these rules, in reliance on the assumption that a consumer who does not wish to continue to receive calls via cellphone will tell their financial institution to stop calling that cell number.

If the Proposal were adopted as written to replace the FCC's longstanding guidance, financial institutions would be faced with significant compliance issues with respect to consumers with whom they are already in contact via cellphone. They would either have to forego most of their communications with those consumers –resulting in consumer dissatisfaction and the potential for consumer harm – or undertake costly efforts to replace consents already obtained with the new, formalistic consent. If re-contact were required, we expect that success would be very limited, since consumers are likely to reject out of hand more “paperwork” received from their financial institution. To avoid these results, and although we strenuously object to the new rule, we request the FCC at the very least to apply the new rule only on a prospective basis.

In closing, for the reasons stated above, we strongly urge the FCC to refrain from adopting the proposed written consent requirement for automated non-marketing calls to wireless numbers. On behalf of Citigroup, I again thank you for the opportunity to provide comments to the Proposal. Should you have any questions or wish to discuss any of these issues further, please call me at (212) 559-9342.

Very truly yours,



Joyce ElKhateeb